HIGH COURT OF UTTARANCHAL AT NAIANITAL

Writ Petition No. 268 (M/S) of 2006
With

Stay Application No. 3239/06

1. Satya Pal
   S/o Chaudhary Raj Singh
2. Jasveer Singh
   S/o Late Sukhpal Singh
   R/o Village Simli Tehsil Lakshar
   District- Haridwar. ....Petitioners

Vs

1. Civil Judge (J.D) District- Haridwar.
2. Madan (Since deceased now represented by)

2/1 Smt. Kareshna W/o Late Madan.
2/2 Ravindra S/o Late Madan
Both R/o Village and post akota, Tehsil Lakshar
District-Haridwar.
2/3 Devendra S/o Late Madan
2/4 Sandeep
S/o Late Madan Respondents Nos. 2/3 and 2/4 R/o Village
Akoda Khurd, Pargana Manglore Tehsil Lakshar, District- Haridwar.
2/5 Smt. Neelam
W/o Sri Surendra Kumar
R/o Village Kumheri Pargana and Tehsil Nakud District- Saharnpur.
2/6 Smt. Poonam

W/o Sri Rakesh Kumar R/o Industrial Area Bhivani (Haryana).
2/7 Smt. Premlata
W/o Sri Vijay Kumar
R/o Jaighar Tehsil and District Yamunagar.
2/8 Smt. Sunita
W/o Sri Sunil Kumar
R/o Jathlana Power House, Tehsil and District Yamunagar (Haryana).

3. Surendra
4. Salek Chandra
   Respondent Nos. 3 and 4 S/O Sri Khem Chand
   Respondent Nos. 3 and 4
   Village Akota Khurd,
   Tehsil Lakshar, District- Haridwar. .....Respondents

Sri Sharad Sharma learned counsel for the petitioners.
Sri Nand Prasad learned Standing counsel for the respondent No.1.
Sri M.S. Tyagi learned counsel for the respondents No.3 and 4.
Dated: 23-3-2006

Hon'ble B.S. Verma, J.

Heard Sri Sharad Sharma learned counsel for the petitioners and Sri M.S. Tyagi learned counsel for the respondents No.3 and 4 and Sri Nand Prasad learned Standing Counsel for the respondent No.1.

The present writ petition has been filed by the petitioner with a prayer for issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 4-3-2006 passed by the respondent No.1 Civil Judge (J.D) Lakar, District Haridwar annexed as Annexure-19 to the writ petition.

By the impugned order the application under order 18 Rule of C.P.C which was moved by the petitioners, has been rejected.

Learned counsel for the petitioners Sri Sharad Sharma has contended that the learned Civil Judge (J.D.) did not assign any reason for rejecting the application.

Learned counsel for the respondents No. 3 and 4 Sri M.S. Tyagi has submitted that the application was moved on 4-3-2006 under Order 18 Rule 18 of C.P.C on the ground that the survey commission has been examined and the survey commission did not disclose the correct measurement so that the plaintiff is not satisfied. In the said application a prayer was made that the court inspect the disputed property himself on spot.

The learned Civil Judge (J.D) has rejected the application on the ground that it is a duty of the plaintiff to prove his case by cogent evidence and it is not a ground for spot inspection that they are not satisfied with the survey report.

Order 18 Rule 18 of the Code of Civil Procedure provides as under:-

> *" The court may at any stage of a suit inspect any property or thing concerning which any question may arise [and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit."*

It is the discretion of the court whether to inspect the property or not as has been provided under Order 18 Rule 18 of C.P.C. Learned Civil Judge (J.D) did not commit any manifest error of law in rejecting the application of the plaintiffs- petitioners. The writ petition is devoid of merits and is liable to be dismissed.

The writ petition is dismissed in limine.

(B.S. Verma,J)

Dated:- 23-03-2006
M.K.